

**NO. 2017-20800**

<b>TODD WHITE</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>V.</b>	§	<b>270TH JUDICIAL DISTRICT</b>
	§	
<b>GREGORY FUNDING LLC</b>	§	
	§	
<b>Defendant.</b>	§	<b>OF HARRIS COUNTY, TEXAS</b>

**PLAINTIFF'S SIXTH AMENDED PETITION**

Plaintiff Todd White (“Plaintiff”), on his own behalf and on behalf of all others similarly situated, brings this Class Action Complaint against Defendant Gregory Funding (“Defendant”) and alleges as follows:

**INTRODUCTION**

1. This is a national class action brought by homeowners whose mortgages are serviced by Defendant, a “portfolio buyer & servicer of residential loans throughout the United States.”<sup>1</sup> This case arises from systemic defects in Defendant’s loan servicing and debt collection practices.

2. Defendant deposited partial payments (i.e., anything less than what Defendant believed was due) received from borrowers in so-called “suspense accounts.” However, from at least August 2015 through May 2017, Defendant did not disclose to borrowers, either on its monthly mortgage statements or otherwise, that these funds were placed in suspense accounts. Nor did Defendant disclose any other amounts in a borrower’s suspense account. Further, Defendant’s mortgage statements affirmatively misrepresented how partial payments had been applied. These practices violated 12 CFR § 1026.41(d) of

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<sup>1</sup> See <http://www.gregoryfunding.com/>

the federal Truth in Lending Act (“TILA”) and 15 U.S. Code § 1692e of the Fair Debt Collection Practices Act (“FDCPA”).

### **THE PARTIES, JURISDICTION, AND VENUE**

3. Plaintiff is an individual and resides in Harris County, Texas.

4. Defendant is a Delaware corporation with its principal place of business in Portland, Oregon.

5. This Court has jurisdiction and venue is proper because all or substantially all of the events underlying Plaintiff’s claim occurred in this district. Defendant has purposefully availed itself of the privileges of conducting business in this district such that requiring Defendant to litigate in this district will not offend traditional notions of fair place and substantial justice. Further, Defendant may be held to account under Texas’ long arm statute as this case arises from a mortgage contract involving a home located in this district, and the performance of the contract, in part or in whole, has been or will be performed in this district. The amount in controversy exceeds the jurisdictional threshold of this Court.

### **FACTUAL ALLEGATIONS**

6. Plaintiff is the owner of the home having the address 9805 Cynthia Ann Court, Houston, TX 77025 (the “Property”), where he has resided for the last 14 years. Defendant has a mortgage on the Property, which at all relevant times has been serviced by Defendant. According to Defendant, Plaintiff’s mortgage was delinquent at the time Defendant acquired and began servicing the loan.

7. Defendant describes itself as a “special” loan servicing company that has “the experience and technologies to provide an effective platform for loan servicing

nationwide.”<sup>2</sup> Defendant “service[s] primarily first lien position residential mortgage loans.” *Id.* Defendant services residential mortgages nationwide, including in the State of Texas. Touted among Defendant’s purported competencies are “Invoicing” and “Payment processing and collection activity for recurring payments.” *Id.* A substantial percentage of the mortgages Defendant services are in default at the time Defendant acquires servicing rights to the loans.

8. Defendant’s “platform for loan servicing” is a software suite that contains a database with files for each mortgage loan serviced by Defendant. Defendant’s software functions by automatically applying algorithms (conceptually, rules) to the loans in the database to determine whether, for example, a payment is due, how much the payment should be, whether a late fee should be assessed, and how payments received from borrowers should be applied. Defendant’s software also automatically generates monthly mortgage statements which are in turn sent to borrowers.

9. A “partial payment” is an amount sent by the borrower that falls short of the amount that Defendant believes is due and owing. Under TILA, a loan servicer must make clear on the next monthly mortgage statement how any partial payment was applied, including “the amount, if any, sent to any suspense or unapplied funds account[.]” 12 CFR § 1026.41(d)(3). Although the requirement existed long before then, Defendant’s monthly mortgage statements did not begin to include this information until May 2017.

10. For example, for Plaintiff’s payments in April of 2016, October of 2016, and February of 2016, \$2,204.28 (the entire amount Plaintiff paid) was placed in a suspense

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<sup>2</sup> [http://www.gregoryfunding.com/loan\\_servicing.asp](http://www.gregoryfunding.com/loan_servicing.asp)

account. However, the next mortgage statement Plaintiff received falsely indicated that the funds were applied to principal, interest, and escrow deficiencies.

11. Prior to May 2017, any time a borrower submitted a partial payment, the next mortgage statement sent by Defendant showed a “\$0.00” in the “partial payments (unapplied)” field in the “past payment breakdown” box. Moreover, the mortgage statements would falsely state that the funds had been applied to principal, interest, and escrow deficiencies.

12. Prior to May 2017, every monthly statement sent by Defendant to a borrower with a positive suspense account balance did not reflect the balance.

13. Once sufficient funds accumulate in a borrower’s suspense account to equal one normal monthly payment, TILA requires the servicer to automatically credit the funds to the borrower’s oldest delinquent payment. This closes out the payment and stops it from accruing interest. Defendant appears to have complied with this requirement.

14. Accordingly, it was important for Defendant’s borrowers to know how much money was in their suspense accounts—even if the borrower was unable to fully cure their deficiency, it would still benefit the borrower to pay enough to close out the oldest installment and stop interest from accruing. Thus, the mortgage statements sent to borrowers with positive suspense account balances prior to May 2017 were misleading. Defendant not only omitted the suspense account balance, it misrepresented that the funds had been applied for various purpose and were now exhausted.

15. Moreover, non-delinquent borrowers with positive suspense account balances were misled each month, as a matter of course, about how much money they would have to pay to avoid a late fee. For example, a borrower with a \$1,000 regular

monthly payment and a \$500 suspense account balance would be told each month that a \$1,000 payment was required to avoid a late fee.

16. Defendant's failure to comply with TILA was systemic. Defendant used the same template mortgage statement for all loans it serviced nationally, and until May of 2017 the template (1) falsely stated that borrowers with positive suspense account balances had balances of \$0.00; (2) falsely stated that partial payments had been applied when in fact they had been placed in suspense accounts; (3) omitted required information explaining to borrowers that suspense account funds would be used to close out an installment once an amount equal to one normal monthly payment had accumulated.

#### **CLASS ALLEGATIONS**

17. Plaintiff brings the claims in this action on behalf of himself, and as a class action. Plaintiff seeks to represent classes initially defined as:

**The TILA Class:** All residential mortgage borrowers who received a mortgage statement from Defendant prior to May 2017 that did not accurately state the balance of the borrower's suspense account.

**The FDCPA Class:** All residential mortgage borrowers whose accounts were delinquent at the time Defendant began servicing their loans and who received a mortgage statement from Defendant prior to May 2017 that did not accurately state the balance of the borrower's suspense account

18. The class period starts on August 13, 2015, or the earliest time permitted by the claims asserted herein, and continues through the present and the date of judgment. Specifically excluded from the Classes are: (a) any officers, directors, or employees of Defendant; (b) any judge assigned to hear this case (or spouse or immediate family member of any assigned judge); (c) any employee of the Court; (d) any juror selected to hear this case; and (e) any attorneys of record and their employees.

19. Plaintiff reserves the right to modify, expand, or amend the above Classes

definition or seek certification of a class that is defined differently than above before any court determines whether certification is appropriate following discovery.

20. *Numerosity.* Members of the Classes are so numerous that joinder of all members is impracticable. While the number of members of each Class is unknown to Plaintiff at this time, Plaintiff is informed and believes that each Class numbers at least in the thousands.

21. *Ascertainability.* The community of interest among the members of each Class in the litigation is well defined and the proposed Classes are ascertainable from objective criteria. The identities of Class members can be obtained from Defendant's business records. Class members can be notified of the pendency of Plaintiff's Complaint by mail or published notice. If necessary to preserve the case as a class action, the Court can redefine the Classes and/or create subclasses.

22. *Commonality and Predominance.* There is a well-defined community of interest in the questions of law and fact affecting the parties to be represented in this action. Common questions of law and fact that exist as to all members of the Classes and predominate over any questions affecting only individual members, include, but are not limited to:

- (a) Whether the mortgage statements sent by Defendant prior to May 2017 complied with TILA;
- (b) Whether the mortgage statements sent by Defendant prior to May 2017 violated the FDCPA;

23. *Typicality.* Plaintiff is a member of both Classes and his claims are typical of the claims of members of the Classes. Typical of members of the Classes, Plaintiff

received mortgage statements that did not disclose that funds paid by him were placed in a suspense account and affirmatively misrepresented the amount Plaintiff would have to pay to close out a mortgage installment. Plaintiff and Class members each sustained, and will continue to sustain, damages arising from Defendant's wrongful conduct, as alleged more fully herein. Plaintiff's claims are founded on the same legal theories as those of the Classes' members.

24. *Adequacy of Representation.* Plaintiff is an adequate representative of the Classes because his interests do not conflict with the interests of the other Class members and because Plaintiff has retained counsel competent and experienced in complex class action and consumer litigation, including substantial experience in the types of claims alleged in this Complaint. Plaintiff and his counsel will fairly and adequately protect the interests of the Classes.

25. *Declaratory and Injunctive Relief.* Defendant has acted or refused to act on grounds generally applicable to Plaintiff and other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Classes.

26. *Superiority of Class Adjudication.* The certification of classes in this action is superior to the litigation of a multitude of cases by members of the Classes. Class adjudication will conserve judicial resources and will avoid the possibility of inconsistent rulings. Moreover, there are Class members who are unlikely to join or bring an action due to, among other reasons, their reluctance to sue Defendant and/or their inability to afford a separate action. Equity dictates that all persons who stand to benefit from the relief sought herein should be subject to the lawsuit and hence subject to an order spreading the costs of

the litigation among the Class members in relation to the benefits received. The damages, restitution, and other potential recovery for each individual member of the Class are modest, relative to the substantial burden and expense of individual prosecution of these claims. Given the amount of the individual Class members' claims, few, if any, Class members could afford to seek legal redress individually for the wrongs complained of herein. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

27. In the alternative, the above-referenced Classes may be certified because:
  - a. The prosecution of separate actions by the individual members of the Classes would create a risk of inconsistent or varying adjudication with respect to individual Class members' claims which would establish incompatible standards of conduct for Defendant;
  - b. The prosecution of separate actions by individual members of the Classes would create a risk of adjudications which would as a practical matter be dispositive of the interests of other members of the class who are not parties to the adjudications, or which would substantially impair or impede the ability of other Class members to protect their interests; and,
  - c. Defendant has acted or refused to act on grounds generally applicable



to the Classes, thereby making appropriate final and injunctive relief with respect to the Classes.

**FIRST CLAIM FOR RELIEF**  
**(Violation of TILA)**  
(By Plaintiff and the TILA Class)

28. Plaintiff incorporates all preceding and succeeding allegations by reference as if fully set forth herein.

29. Plaintiff brings this claim individually and on behalf of the TILA Class against Defendant.

30. Defendant is a party subject to the provisions of TILA.

31. Defendant is a “servicer” as that term is used in 24 CFR 3500.2(b).

32. Under TILA, a loan servicer must disclose on the next period statement “the amount [of the past payment], if any, sent to any suspense or unapplied funds account[.]” 12 CFR § 1026.41(d)(3). Similarly, 12 C.F.R. § 1026.36(c) (1) (ii) requires that “Any servicer that retains a partial payment ... in a suspense or unapplied funds account shall ... Disclose to the consumer the total amount of funds held in such suspense or unapplied funds account on the periodic statement[.]”

33. Defendant violated TILA by repeatedly depositing partial payments received from borrowers in a suspense account, but not disclosing this information on the monthly statements it sent to borrowers like Plaintiff or members of the Class.

34. Defendant further violated TILA by affirmatively misrepresenting the balance of borrower suspense accounts and how partial payments had been applied to borrower accounts.

35. Defendant systematically and pervasively engaged in violations of TILA to the detriment of members of the Class.

36. Pursuant to 15 U.S.C. Section 1640(a) of TILA, Plaintiff and all other Class members are entitled to actual and statutory damages, plus reasonable attorneys' fees and costs of suit, in amounts to be proven at trial.

**SECOND CLAIM FOR RELIEF**  
**(Violation of the FDCPA)**  
(By Plaintiff and the FDCPA Class)

37. Plaintiff incorporates all preceding and succeeding allegations by reference as if fully set forth herein.

38. Plaintiff and the members of the FDCPA Class are natural persons obligated or allegedly obligated to debts incurred for personal, family, and/or household purposes, and as such are "consumers" within the meaning of 15 U.S.C. § 1692a(3).

39. Defendant acquired the mortgages from Plaintiff and all FDCPA Class members at such time when those mortgages were in default. As such, Defendant is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6).

40. Defendant used monthly letters to borrowers, an instrumentality of interstate commerce, to make false, deceptive, or misleading representations to Plaintiff and all members of the FDCPA Class in violation of 15 U.S.C. § 1692e. These included, but are not limited to, the false representation of the character, amount, or legal status of Plaintiff and FDCPA Class members' debts (15 U.S.C. § 1692e(2)(A)), and the use of false representations or deceptive means to collect or attempt to collect Plaintiff and Class Members' debts (15 U.S.C. § 1692e(10)).

41. More specifically, the letters Defendant sent violated the FDCPA by (a) falsely representing that borrowers with positive suspense account balances did not have any funds held in suspense; (2) the amount of money that Plaintiffs and other FDCPA Class members would have to pay to close out delinquent installments or avoid late fees; and (3)

falsely representing that the funds from partial payments submitted by Plaintiffs and other FDCPA Class members had been applied to the borrower's account.

42. Defendant's misconduct was frequent, persistent, and intentional.

43. As a result of Defendant's misconduct, Plaintiff and other FDCPA Class members were harmed.

44. Pursuant to 15 U.S.C. § 1692k, Plaintiff and FDCPA Class members Plaintiff and members of the FDCPA Class are entitled to actual damages, statutory damages, costs, and attorneys' fees.

### **DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues so triable.

### **PRAYER**

**WHEREFORE**, Plaintiff prays for judgment as follows:

1. This action be certified as a class action, that Plaintiff be designated the class representative, and that his counsel be appointed as class counsel,
2. Actual and statutory damages;
3. Attorneys' Fees;
4. Costs of suit;
5. Prejudicial interest at the highest permissible rate; and
6. Such other relief as the Court deems just and proper.

Respectfully submitted,

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**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY**

**CERTIFICATE OF SERVICE**

By my signature below, I hereby certify that a true and correct copy of the foregoing legal instrument was served on all counsel of record through the Court's electronic case filing system.

/s/ Jeff Edwards  
Jeff Edwards

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